

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:

ATLANTA LIGHT BULBS, INC.,

Debtor.

TANDEM BANK,

Movant,

v.

ATLANTA LIGHT BULBS, INC.

Respondent.

CHAPTER 11

CASE NO. 22-52950-pmb

CONTESTED MATTER

NOTICE OF HEARING ON MOTION TO DISMISS BANKRUPTCY CASE

PLEASE TAKE NOTICE that on May 25, 2022, Tandem Bank, a creditor of Atlanta Light Bulbs, Inc., filed a *Motion to Dismiss Bankruptcy Case* (the "Motion").

PLEASE TAKE FURTHER NOTICE that the Court will hold an initial telephonic hearing for announcements on the Motion at the following toll-free number: **833-568-8864; access code: 161 706 9079, at 1:20 p.m. on June 13, 2022, in Courtroom 1202, United States Courthouse, 75 Ted Turner Drive, SW, Atlanta, Georgia 30303.**

Matters that need to be heard further by the Court may be heard by telephone, by video conference, or in person, either on the date set forth above or on some other day, all as determined by the Court in connection with this initial telephonic hearing. Please review the "Hearing Information" tab on the judge's webpage, which can be found under the "Dial-in and Virtual Bankruptcy Hearing Information" link at the top of the webpage for this Court, www.ganb.uscourts.gov for more information.

Your rights may be affected by the court's ruling on these pleadings. You should read these pleadings carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.) If you do not want the court to grant the relief sought in these pleadings or if you want the court to consider your views, then you and/or your attorney must attend the hearing. You may also file a written response to the pleading with the Clerk at the address stated below, but you are not required to do so. If you file a written response, you must attach a certificate stating when, how and on whom (including addresses) you served the response. Mail or deliver your response so that it is received by the Clerk at least two business days before the hearing. The address of the Clerk's Office is Clerk, U. S. Bankruptcy Court, Suite 1340, 75 Ted Turner Drive, Atlanta Georgia 30303. You must also mail a copy of your response to the undersigned at the address stated below.

This 25th day of May, 2022.

JONES & WALDEN LLC

/s/ Leslie M. Pineyro

Leslie M. Pineyro, Georgia Bar No. 969800

Attorney for Tandem Bank

699 Piedmont Avenue, NE, Atlanta, Georgia 30308

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CASE NO. 22-52950-pmb

CONTESTED MATTER

MOTION TO DISMISS BANKRUPTCY CASE

COMES NOW Tandem Bank and hereby files this *Motion to Dismiss Bankruptcy Case* (the “Motion”). In support of the Motion, Tandem Bank shows the Court as follows:

JURISDICTION

1. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)

BACKGROUND

2. On April 15, 2022 (“Petition Date”), Halco Lighting Technologies, LLC, Candela Corporation, and Norcross Electric Supply Company filed an involuntary petition (Doc. No.1) (the “Involuntary Petition”) for relief against Atlanta Light Bulbs, Inc. (“Debtor”) under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 et seq., (the “Bankruptcy Code”).

3. Debtor is a Georgia corporation which, upon information and belief, is in the lighting business (“Business”) and operates out of leased premises located at 2109 Mountain Industrial Blvd, Tucker, GA 30084 (the “Premises”).

4. Debtor filed no timely response to the Involuntary Petition. Debtor’s response to

the Involuntary Petition was due May 13, 2022. No lawyer or representative of Debtor has appeared as of the date hereof.

5. On May 12, 2022, the Court entered its *Order Granting Motion for Examination Pursuant to Federal Rule for Bankruptcy Procedure 2004* (Doc. No. 17) (the “2004 Order”) authorizing Tandem Bank to proceed with discovery and conduct an examination of Debtor. Tandem Bank attempted to voluntarily schedule the production of documents and examination through a lawyer who represented Debtor in other matters, but those efforts were unsuccessful. Tandem Bank additionally attempted to compel the same through issuance of a subpoena as set forth in Federal Rule of Civil Procedure 45 requiring production of documents on or by May 23, 2022, and an examination of Debtor on May 24, 2022. Debtor has failed to comply with the subpoena.

6. Tandem Bank is the holder of a secured claim against Debtor in the principal amount of \$600,000.00, plus pre-petition interest, post-petition interest, attorney’s fees and charges as allowed by law, as evidenced by a Promissory Note (the “Note”) and Business Loan Agreement dated September 2, 2020 (the “Loan Agreement”).

7. Tandem Bank’s claim is collateralized by a first priority security interest in all of Debtor’s assets, including but not limited to, all inventory, chattel paper, accounts, equipment, general intangibles and fixtures; whether any of the foregoing is owned now or acquired later; all accessions, additions, replacements, and substitutions relating to any of the foregoing; all records of any kind relating to any of the foregoing; all proceeds relating to any of the foregoing (including insurance, general intangibles and other account proceeds) (the “Collateral”) pursuant to that certain Commercial Security Agreement dated September 2, 2020 (the “Security Agreement”).

8. Tandem Bank’s lien extends to Debtor’s cash collateral. No cash collateral motion has been filed, and no request has been received by Tandem Bank to approve the use of cash collateral.

9. Tandem Bank’s claim is evidenced and perfected by virtue of that certain UCC

Financing Statement recorded in the records of the Clerk of Superior Court of Dekalb County on September 14, 2020, as File No. 044-2020-004114 (the “UCC”). (The Note, Loan Agreement, Security Agreement, and UCC are collectively referred to herein as the “Loan Documents”).

10. The Loan Documents were in default on the Petition Date for reasons including Debtor’s failure to provide financial information required by the Loan Documents, Debtor’s change in ownership, and Debtor’s payment defaults. The Note matured by its own terms on September 2, 2021, and remains unpaid.

11. Upon information and belief, all of Debtor’s assets are fully encumbered by Tandem Bank’s secured claim pursuant to the Loan Documents.

STATUTORY PREDICATES

12. Under Section 1112(b) of the Bankruptcy Code, a court may dismiss a debtor’s chapter 11 case “for cause.” 11 U.S.C. § 1112(b); *In re Albany Partners, Ltd.*, 749 F.2d 670, 674 (11th Cir. 1984); *In re Blunt*, 236 B.R. 861, 864 (Bankr. M.D. Fla. 1999). Section 1112(b) states, in pertinent part “on request of a party in interest, and after notice and a hearing, the court shall...dismiss a case under this chapter...for cause...” 11 U.S.C. § 1112(b).

13. A determination of cause is made by the court on a case-by-case basis. See *Albany Partners*, 749 F.2d at 674. In addition, a bankruptcy court is not required to explain its reasons for dismissal in detail because such decisions are particularly delegated to the bankruptcy court’s sound discretion. See *In re Camdon Ordnance Mfg. Co. of Arkansas, Inc.*, 1999 WL 587790, at *2 (Bankr. E.D. Pa. 1999) (citing *In re Atlas Supply Corp.*, 837 F.2d 1061, 1063 (5th Cir. 1988)). Therefore, it is clear that the Court is authorized to dismiss the Debtor’s chapter 11 case upon a showing of “cause.”

14. The legislative history of Section 1112(b) indicates that a court has wide discretion to use its equitable powers to dispose of a debtor’s case. H.R. Rep. No. 595, 95th Cong., 1st Sess. 405 (1977); S. Rep. No. 989, 95th Cong., 2d Sess. 117 (1978), reprinted in 1978 U.S.C.C.A.N. 5787, *see also In re Preferred Door Co.*, 990 F.2d 547, 549 (10th Cir. 1993) (a court

has broad discretion to dismiss a bankruptcy case); *In re Sullivan Cent. Plaza I, Ltd.*, 935 F.2d 723, 728 (5th Cir. 1991) (determination of whether cause exists under Section 1112(b) “rests in the sound discretion” of the bankruptcy court); *In re Koerner*, 800 F.2d 1358, 1367 & n. 7 (5th Cir. 1986) (bankruptcy court is afforded “wide discretion” under Section 1112(b); *Albany Partners*, 749 F.2d at 647. For reasons more fully explained below, the Court should use its grant of broad authority to dismiss the Debtor’s chapter 11 case.

15. Section 1112 provides a nonexclusive list of grounds for dismissal. 11 U.S.C. § 1112; *Frieouf v. U.S.*, 938 F.2d 1099, 1102 (10th Cir. 1991) (Section 1112’s list is non-exhaustive); *Blunt*, 236 B.R. at 864. Cause for dismissal of bankruptcy case is not limited to examples enumerated in 11 USCS § 1112 but is a matter of discretion for court. *In re Mid-Valley Aggregates, Inc.* 49 BR 498 (Bankr. D. N.D. 1985).

16. Courts have found cause for dismissal where no bankruptcy purpose would be served by the continuation of the case. See *In re Forum Health*, 444 B.R. 848, (Bankr. N.D. Oh. 2011). Thus, the Court may dismiss the Debtor’s chapter 11 case where it is reasonably shown that there is no bankruptcy purpose served by continuation of the bankruptcy.

DISCUSSION

17. No lawyer, officer or person in control of Debtor has appeared on behalf of Debtor. Accordingly, no fiduciary is actively managing the bankruptcy estate or performing the duties of a debtor in possession.

18. Debtor’s assets are subject to a first, priority “blanket lien” held by Tandem Bank. Tandem Bank’s secured claim is in excess of \$600,000.00. Debtor’s assets are fully encumbered. Upon information and belief, Tandem Bank’s claim is under-secured as the assets are less than the debt due Tandem Bank.

19. As Debtor’s assets are fully encumbered by Tandem Bank’s secured claim, no assets exist from which to pay administrative expenses or any professional to take control of Debtor. The estate appears to be administratively insolvent. Moreover, the appointment of such

a professional would not likely lead to any recovery for unsecured creditors.

20. No bankruptcy purpose would be served by the continuation of this case in bankruptcy court.

21. Tandem Bank moves to dismiss the Bankruptcy Case on the grounds that: (i) Debtor is not performing its statutory duties and no fiduciary is serving the estate; (ii) Debtor has failed to participate in this Bankruptcy; (iii) Debtor appears to be using Cash Collateral without authority in violation of 11 U.S.C. §§363(c)(2) and (4)¹; (iv) the estate appears to be administratively insolvent; (v) Debtor is not represented by counsel and an entity cannot be a party to a bankruptcy case without an attorney; and (vi) all of Debtor's assets are fully encumbered by the secured claim of Tandem Bank resulting in no distribution to unsecured creditors or any junior lien holders.

NOTICE

22. Notice of this Motion shall be given to (a) the Office of the United States Trustee (b) all creditors and (c) all parties in interest.

CONCLUSION

WHEREFORE, Tandem Bank respectfully request that this Court enter an Order (a) dismissing the Debtor's Chapter 11 case under Section 1112(b) of the Bankruptcy Code, and (b) granting such other and further relief as this Court deems just and proper.

Respectfully submitted this 25th day of May, 2022.

JONES & WALDEN LLC
/s/ Leslie M. Pineyro
Leslie M. Pineyro
Georgia Bar No. 969800
Attorney for Tandem Bank
699 Piedmont Ave NE, Atlanta, Georgia 30308
(404) 564-9300
lpineyro@joneswalden.com

¹ Tandem Bank reserves the right to assert any claims against Debtor or any other person or entity related to the unauthorized post-petition use or receipt of cash collateral.

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Debtor.

Chapter 11

Case No. 22-52950-pmb

CERTIFICATE OF SERVICE

This is to certify that I have on this day electronically filed the foregoing "Motion to Dismiss Bankruptcy Case" (the "Motion") using the Bankruptcy Court's Electronic Case Filing program, which sends a notice of and an accompanying link to the Motion to the following parties who have appeared in this case under the Bankruptcy Court's Electronic Case Filing Program:

- **John C. Cannizzaro** john.cannizzaro@icemiller.com
- **Thomas Dworschak** thomas.w.dworschak@usdoj.gov, ltctommyd@aol.com
- **Kathleen G. Furr** kfurr@bakerdonelson.com, lgoforth@bakerdonelson.com;ali.lowe@bakerdonelson.com
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- **Kristen A. Yadlosky** kristen.yadlosky@hartmansimons.com, deloris.person@hartmansimons.com

I further certify that I have served a copy of the Motion on the party listed below via method indicated and on the parties listed on the attached mailing matrix via U.S. first-class mail, postage prepaid:

Via U.S. First Class Mail and

Via Certified Mail, Return Receipt Requested:

Atlanta Light Bulbs, Inc.

Attn: Jessica Mendoza, CFO, CEO & Secretary

2109 Mountain Industrial Blvd

Tucker, GA 30084

This 25th day of May, 2022.

JONES & WALDEN LLC

/s/ Leslie M. Pineyro

Leslie M. Pineyro

Georgia Bar No. 969800

Attorney for Tandem Bank

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Label Matrix for local noticing

American Express Travel Related Services Co.

c/o Zwicker and Associates, P.C.

Attorneys/Agents for Creditor

P.O. Box 9043

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Case 22-52950-pmb

Northern District of Georgia

Atlanta

Wed May 25 09:23:07 EDT 2022

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Candela Corporation

5600 Argosy Ave, Suite 300

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Fanlight Corporation, Inc.

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Halco Lighting Technologies, LLC

2940 Pacific Drive

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Hatch Transformers, Inc., d/b/a Hatch Lighti

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